2418.

SUPREME COURT OF THE UNITED STATES

No. 193.

JAMES PAGE, COLLECTOR U. S., DEFENDANT,

vs.

JOSEPH FLEMING AND WILLIAM A. MARSHALL, TRADING UNDER THE FIRM OF FLEMING & MARSHALL.

Certificate of division from the circuit court of the United States for Pennsylvania.

INDEX.

	Original.	Print.
Petition of James Page	1	2
Writ of certiorari	4	3
Judges' return to writ	6	4
Trial by jury	11	5
Verdict	11	5
Reasons for new trial	12	6
Case stated	13	6
Division of opinion	16	8
Certificate of the clerk	18	8

GIDEON, Printer.

Pleas before the honorable the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, of October session, A. D. 1848, it is thus contained:

Be it remembered, that on the twenty-ninth day of September, A. D. 1848, Thomas M. Pettit, esquire, attorney of the United States, in and for the district above named, came into the said court and exhibited the petition of James Page, collector of the customs at the port of Philadelphia, which being read and filed is in the words following, to wit:

The honorable the circuit court of the United States, for the eastern district of Pennsylvania.

The petition of James Page, respectfully represents, that a suit has been commenced by summons against him, as defendant, by Joseph Fleming and William A. Marshall, trading under the firm of Fleming and Marshall, as plaintiffs, in the district court of the city and county of Philadelphia, of the State of Pennsylvania, to September term, 1847, No. 776. That the said suit is brought on account of an act done by him, under the revenue laws of the United States, as collector of the customs at the port of Philadelphia; the suit being to recover certain duties collected by the defendant, as collector as aforesaid, and in the execution of his office, on certain goods imported into Philadelphia by the plaintiffs from Tampico, in Mexico, and which duties were paid by the plaintiffs under protest.

He respectfully prays that the said cause may be entered on the docket of your honorable court, and proceeded in as a cause originally commenced in your honorable court, and that a rule of certiorari be immediately issued by the clerk of your honorable court to the district court aforesaid, to send to the circuit court of the United States, in and for the eastern district of Pennsylvania, the record and proceedings in the said cause according to the provisions of the act of Congress in such case made and provided; and he will ever pray, &c.

JAMES PAGE.

James Page being duly affirmed, says, that the facts set forth in the above petition are true to the best of his knowledge and belief.

JAMES PAGE.

Affirmed and subscribed before me, this 26th September, 1848.

GEORGE PLITT,
United States Commissioner.

I certify, that as counsel for the above petitioner I have examined the proceedings against him, and have carefully inquired into all the matters set forth in the above petition, and that I believe the same to be true. September 26, 1848.

T. M. PETTIT,
Attorney for Defendant.

And thereupon, to wit, on the same day, it is ordered, that a certiorari be forthwith issued to the said district court, to send the record and proceedings in the said suit into this court, as in and by the said petition is prayed.

And the said writ is issued in the words following, to wit:

[L. S.] The President of the United States, to the district court for the city and county of Philadelphia, greeting:

Whereas lately in the said district court, for the city and county of Philadelphia, a certain James Page, late of the eastern district of Pennsylvania, was summoned to answer unto Joseph Fleming and William A. Marshall, trading under the firm of Fleming and Marshall, in a plea of trespass on the case, &c.; which said plea, as it is said, is still depending before you in the said district court undetermined.

And whereas on the application of the said James Page to the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit, on a suggestion, supported by proper evidence, that the said suit is brought on account of an act done by him, under the revenue laws of the United States, when collector of the customs of the port of Philadelphia, viz., to recover certain duties collected by the defendant, when holding the office of collector, as aforesaid, and in execution thereof, on certain goods imported into Philadelphia by the plaintiffs, and which duties were paid by the plaintiffs under protest; and praying that a writ of certiorari may be immediately issued by the clerk of said circuit court of the United States to the said district court of the city and county of Philadelphia directed, requiring the said district court of the city and county of Philadelphia to send to the said circuit court of the United States the record and proceedings in said cause, according to the provisions of the act of Congress in such case made and provided.

Therefore, you are hereby commanded to transmit, under your seal, the record and proceedings of the said suit, with all things thereunto relating, unto the said circuit court of the United States, to be holden at Philadelphia, for the eastern district of Pennsylvania, in the third circuit, plainly and distinctly, in as full and ample manner as it now remains before you, together with this writ; so that the said circuit court of the United States may be able thereon to proceed, and to do what shall appear of right ought to be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this twenty-ninth day of September, A. D. 1848, and in the seventy-third year of the independence of the United States.

GEORGE PLITT,
Clerk, Circuit Court.

And the said judges of the said district court make return to the said certiorari, in the words following, to wit:

To the honorable the justices of the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit.

The record and proceedings in the plea within mentioned, with all things touching the same, so full and entire as before us they remain, we certify and send, together with this writ, as within we are commanded.

GEORGE SHARSWOOD, [SEAL.]
JOHN K. FINDLAY. [SEAL.]

In the district court for the city and county of Philadelphia.

September term, A. D. 1847, No. 776. Sum's case, exit Oct. 25th. Ret. 1st Mon. Nov. "Service accepted by defendant."

JOSEPH FLEMMING and William A. Marshall, trading under the firm of Fleming and Marshall, vs. JAMES PAGE. } McCALL. 776. PETTIT.

December 17th.—Narr. filed.

Eo. die., defendant by his attorney pleads non assumpsit and payment, with leave, &c.

October 2d, 1848.—Certiorari from the circuit court of the United States brought into office.

Certified from the record. October 18th, 1848.
B. M. SHAIN, [L. S.] *Pro Proth'y.*

City and county of Philadelphia, ss:

[L. S.] The Commonwealth of Pennsylvania, to the sheriff of Philadelphia county, greeting:

We command you that you summon James Page, late of your county, so that he be and appear before our judges at Philadelphia, at our district court for the city and county of Philadelphia, to be holden at Philadelphia, in and for the said city and county of Philadelphia, the first Monday of November next, there to answer Joseph Flemming and William A. Marshall, trading under the firm of Flemming and Marshall, of a plea of trespass on the case, &c., and have you then there this writ.

Witness the honorable Joel Jones, president of our said court at Philadelphia, the 25th day of October, in the year of our Lord one thousand eight hundred and forty-seven.

D. C. SKERRETT, *Prothonotary.*

I accept service, and authorize T. M. Pettit, esq., to appear for me.
J. PAGE.

November 4, 1847.

In the district court for the city and county of Philadelphia, of September term, 1847. No. 776.

City and county of Philadelphia, ss:

James Page, late of the city aforesaid, was summoned to answer Joseph Flemming and William A. Marshall, trading under the firm of Flemming and Marshall, of a plea of trespass on the case, and so forth; and thereupon the said plaintiffs, by P. McCall, their attorney, declare and say: For that whereas heretofore, to wit, on the first day of September, in the year one thousand eight hundred and forty-seven, the said defendant was indebted to the said plaintiffs in the sum of two thousand dollars, lawful money of the United States, for so much money before that time had and received by the said defendant to and for the use of the said plaintiffs; and being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the city aforesaid, undertook, and then and there faithfully promised the said plaintiffs to pay them the said sum of money, when he, the said defendant, should be thereto afterwards requested. Yet the said defendant, although often thereto requested, to wit, on the day and year aforesaid, at the city aforesaid, and often afterwards, has not paid the said sum of money, or any part thereof, to the said plaintiffs, but he to pay the same, or any part thereof, to them has hitherto wholly neglected and refused, and still does neglect and refuse, to the damage of the plaintiffs four thousand dollars; and therefore they bring their suit, and so forth.

Pledges, &c. JOHN DOE,
RICHARD ROE.

Endorsed.—"September, 1847, No. 776. Joseph Flemming and William A. Marshall, trading as Flemming and Marshall, *vs.* James Page. Narr. in case, McCall. Defendant pleads non assumpsit and payment, with leave, &c.

"T. M. PETTIT, *Att'y for defendant.*

"Filed December 17, 1847."

Therefore let a jury come before the judges aforesaid, at Philadelphia aforesaid, on the eleventh day of April next; by whom, &c., who neither, &c., to recognise, &c., because as well, &c.; the same day is there given to the parties aforesaid, then and there, &c.

Afterwards, to wit, at a session of the same court, holden at Philadelphia aforesaid, before the judges aforesaid, on the first day of May, A. D. 1849, come the parties aforesaid, by their attorneys aforesaid; and the jurors of the jury aforesaid being called, likewise come, to wit: Joseph H. Hoffman, William Levering, Michael Righter, Robert Churchman, George Taber, George Seidenstecker, John J. Vanderkemp, Samuel Nevins, Thomas Lancaster, Henry H. Horne, Samuel Linn, and John Thompson; who, upon their respective oaths and affirmations, do declare and say, that they find in favor of the plaintiff, and

assess the damages at one thousand seven hundred and seven $\frac{38}{100}$ dollars, ($1,707.38.)

Whereupon, the said Joseph Flemming, surviving partner of William A. Marshall, trading as Flemming and Marshall, by their attorney aforesaid, pray judgment upon the verdict aforesaid; and the said James Page, by his attorney aforesaid, says that the court here ought not to render judgment of and upon the said verdict, and prays that judgment of and upon the said verdict may be stayed, because the same is insufficient and erroneous; and prays that the verdict aforesaid may be quashed, and that the issue aforesaid may be tried anew by other jurors, to be afresh empannelled; because—

First. That the learned judge erred in charging the jury that, in the year 1847, Tampico was not a portion of a foreign country within the meaning of the 1st section of the act of Congress of the United States, passed July 30, 1846, entitled "An act reducing the duty on imports, and for other purposes."

Second. That the learned judge erred in charging the jury that, in the year 1847, Tampico was so far under the dominion of the United States that goods, wares, and merchandise, imported from that port into Philadelphia, in March and June of that year, were not subject to the payment of duties.

Third. That the learned judge erred in charging the jury that, upon the facts in evidence, the plaintiff was entitled to a verdict for the amount of duties paid under protest, on the 15th June, 1847, on merchandise imported in the schooner Catharine from Tampico into the port of Philadelphia, in March and June, 1847.

And the following case is stated for the opinion of the court:

FLEMMING & MARSHALL
vs.
PAGE.

This action is brought by the plaintiffs, merchants, residing in the city of Philadelphia, against the defendant, the late collector of the port of Philadelphia, to recover the sum of $1,529, duties paid on the 14th June, 1847, under protest, on goods belonging to the plaintiffs, brought from Tampico while that place was in the military occupation of the forces of the United States.

On the May, 1846, the Congress of the United States declared that war existed with Mexico. In the summer of that year, New Mexico and California were subdued by the American armies, and military occupation taken of them, which continued until the treaty of peace of May, 1848.

On the 15th November, 1846, Commodore Conner took military possession of Tampico, a seaport of the State of Tamaulipas, and from that time until the treaty of peace it was garrisoned by American forces, and remained in their military occupation. Justice was administered there by courts appointed under the military authority, and a custom-house was established there, and a collector appointed, under the military and naval authority.

On the 29th December, 1846, military possession was taken by the United States of Victoria, the capital of Tamaulipas. Garrisons were established by the Americans at various posts in that State; and, at the period of the voyages from Tampico of the schooner Catherine, hereinafter mentioned, Tamaulipas was reduced to military subjection by the forces of the United States, and so continued until the treaty of peace.

On the 19th December, 1846, the schooner Catherine, an American vessel chartered by the plaintiffs, cleared coastwise from Philadelphia for Tampico.

On the 13th February, 1847, she was cleared at the custom-house at Tampico, on her return voyage to Philadelphia, under a coasting manifest, signed by Franklin Chase, United States acting collector, (prout the same.)

The Catherine brought back a cargo of hides, fustic, sarsaparilla, vanilla, and jalap, the property of the plaintiffs, which were admitted into the port of Philadelphia free of duty. The Catherine cleared again, coatwise, from Philadelphia for Tampico, on the 18th of March, 1847, and in June, 1847, brought back a return cargo of similar merchandise, owned by the plaintiffs, which the defendant, acting under the instructions of the Secretary of the Treasury, refused to admit, unless the duties on the merchandise brought by the Catherine on her former voyage were paid, as well as the duties on the goods brought by her on this voyage.

Thereupon the plaintiffs, on the 14th of June, 1847, paid, under protest, the duties on both voyages, amounting to $1,529, and brought this action to recover back the moneys so paid.

The question for the decision of the court is, whether the goods so imported by the Catherine were liable to duty. If the court are of opinion that they *were not so liable*, then judgment is to be entered for the plaintiffs for the sum of $1,529, with interest from the 14th June, 1847.

If they are of opinion that they were liable to duty, then judgment is to be entered for the defendant.

It is agreed that all instructions from the several departments of the Government to any of its officers, and all documents of a public nature, touching the war with Mexico, or our relations with that country, which either party may desire to bring to the attention of the court, shall be considered as if made part of this case.

McCALL, *for Pltfs.*
JOHN W. ASHMEAD, *for Defts.*

October sessions, 1848.

FLEMMING AND MARSHALL vs. PAGE. } No. 7.

And now, to wit, on the eighth day of August, anno domini 1849, the above cause came on to be argued on the case stated by the parties;

when, upon said hearing, the judges were opposed in opinion, and a disagreement happened on the following point, viz:

Whether Tampico, in the year 1847, while in the military occupation of the forces of the United States, ceased to be a *foreign country*, within the meaning of the 1st section of the act of Congress, passed July 30, 1846, entitled "An act reducing the duty on imports, and for other purposes," so that goods, wares, and merchandise, of the produce, growth, and manufacture of Mexico, or any port thereof, imported into the port of Philadelphia from Tampico, during said military occupation, were not subject to the payment of the duties prescribed by the said act, but entitled to be entered free of duty, as from a domestic port?

Whereupon, during the said term, at the request of John W. Ashmead, counsel for the said defendant, such disagreement upon the point aforesaid is now stated, under the direction of the said judges, to be certified under the seal of the said court, to the Supreme Court of the United States at their next session.

R. C. GRIER, *Circuit Judge.*
J. K. KANE, *District Judge.*

UNITED STATES OF AMERICA,
Eastern district of Pennsylvania, ss.

I certify the foregoing to be a true and faithful copy of the record and proceedings of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, in a certain suit therein lately depending, wherein Joseph Flemming and William A. Marshall, trading under the firm of Flemming and Marshall, were plaintiffs, and James Page was defendant.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of the said circuit court, at Philadelphia, this
[SEAL.] sixteenth day of November, A. D. 1849, and in the seventy-fourth year of the independence of the said United States.

GEORGE PLITT,
Clerk circuit court.

2422.

SUPREME COURT OF THE UNITED STATES.

No. 207.

WILLIAM H. MARRIOTT, PLAINTIFF IN ERROR,

vs.

FREDERICK W. BRUNE, JOHN C. BRUNE, AND WILLIAM H. BRUNE.

IN ERROR TO THE CIRCUIT COURT, UNITED STATES, FOR THE DISTRICT OF MARYLAND.

INDEX.

	Original.	Print.
Declaration	1	2
Rule—Plea	4	4
Imparlance	5	4
Statement of facts	6	5
Exhibits A and B.		
General protest, C	13	16
Special protests	14	17
Invoice of the schooner Samuel L. Mitchell	17	18
Invoice of the brig Uzardo	18	19
Invoice of the schooner General Taylor	19	20
Invoice of the schooner General Taylor	20	21
Statement of account under the decision of the court	21	22
Copy of a letter from F. W. Brune & Sons to the Secretary of the Treasury, 28th June, 1847	23	23
Letter from the Secretary of the Treasury to F. W. Brune & Sons, 9th August, 1847	24	24
Letter from the Secretary of the Treasury to Moses Taylor and others, 16th July, 1847	25	24
Letter from the Secretary of the Treasury to the Collector of New Orleans, January 30, 1847	26	24
Letter from the Secretary of the Treasury to the Collector at Baltimore	27	25
Treasury circular, 24th March, 1847	28	26
Judgment	31	27
Writ of error	33	28
Citation	35	28
Writ of error bond	36	29
Agreement	37	29
Clerk's certificate	38	30

Gideon, printer.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States, for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in April, in the year of our Lord one thousand eight hundred and forty-nine.

Present, the honorable Roger B. Taney, chief justice of the Supreme Court of the United States; U. S. Heath, judge of Maryland district; William L. Marshall, esquire, attorney; Moreau Forrest, esquire, marshal; Thomas Spicer, clerk.

Among other were the following proceedings, to wit:

FREDERICK W. BRUNE, John C. Brune, and William H. Brune,
vs.
WILLIAM H. MARRIOTT.

Be it remembered, that heretofore, to wit, on the fourth day of November, in the year of our Lord one thousand eight hundred and forty-eight, the said Frederick W. Brune, John C. Brune, and William H. Brune, by George William Brown and Frederick W. Brune, their attorneys, declared in the circuit court here, against the said William H. Marriott, in a plea of trespass on the case, and so forth, in the words and of the tenor following, to wit:

Declaration.

Circuit court of the United States, in and for the district of Maryland.

DISTRICT OF MARYLAND, *sct.*

William H. Marriott, collector of the port of Baltimore, late of Maryland district, was attached to answer Frederick W. Brune, John C. Brune, and William H. Brune, copartners, and *and* trading under the firm and copartnership name of F. W. Brune & Sons, of a plea of trespass on the case, &c.

And thereupon, the said plaintiffs in this action, by Brown and Brune, their attorneys, complain:

For that whereas the said defendant, acting in his office of collector aforesaid, illegally exacted payment of the plaintiffs of the sum of ten thousand dollars, for and by reason of an excess of duties, claimed by him to be payable on account of a large quantity of sugar and molasses, imported at different times by the plaintiffs into the port of Baltimore, since the second day of February, eighteen hundred and forty-seven; and which sum of ten thousand dollars is an excess of duties over and above the amount legally chargeable and paid by the plaintiffs for du-

ties on such importations; and such excess arises from the defendant charging the plaintiffs with duties upon the value of their said importations at the port of shipment, without allowance for leakage, or loss in weight or gauge, after the date of the shipment, and prior to the entry of such importations; and the payment of which excess of duties thus illegally exacted amounting to six thousand dollars as aforesaid, was made by the plaintiffs, under protest, to obtain possession of said goods so imported, whereby the said defendant became liable to pay said plaintiffs the sum of ten thousand dollars so excessively and illegally demanded, and being so liable, the defendant promised to pay the same to the plaintiffs.

And whereas, the defendant, collector as aforesaid, afterwards, to wit, on the twentieth day of October, in the year eighteen hundred and forty eight, was indebted to the said plaintiffs in another like sum of money, for sundry matters properly chargeable in account, as by the particular account thereof, herewith into court brought, may and doth more fully and at large appear; and also in another like sum of money, for divers goods, wares, and merchandise by the said plaintiffs before that time sold and delivered to the said defendant, and at his like special instance and request; and also in another like sum of money, for money by the plaintiffs before that time lent and advanced to, and paid, laid out and expended for, the said defendant, and at his like special instance and request; and also in another like some of money, for so much other money by the said defendant before that time had and received to and for the use of the said plaintiffs; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook, and then and there faithfully promised the said plaintiffs to pay them the said several sums of money in this count mentioned, when the said defendant should be thereto afterwards requested.

And whereas, also, the said defendant, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, accounted with the said plaintiffs of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiffs, and then in arrear and unpaid, and upon such accounting the said defendant was then and there found to be in arrear and indebted to the said plaintiffs in another larger sum of money, to wit, in the further sum of ten thousand dollars, of like lawful money; and being so found to be in arrear and indebted to the said plaintiffs, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook and faithfully promised the said plaintiffs to pay them the last mentioned sum when the said defendant should be thereto afterwards requested.

Nevertheless the said defendant, not regarding his said promises and undertakings, hath not yet paid the aforesaid several sums of money, or either of them, or any part of either of them, to the said plaintiffs, (although so to do the said defendant was requested by the said plaintiffs,

afterwards, to wit, on the day and year aforesaid, and often afterwards, at the district aforesaid,) but to pay the same the said defendant hath hitherto altogether refused, and doth still refuse so to do, to the damage of said plaintiffs ten thousand dollars, and therefore they bring suit, &c.

BROWN & BRUNE,
Plaintiffs' attorneys.

Which said declaration is thus endorsed, to wit:

Mr. SPICER: Docket this suit, by consent, to November term, 1848.

BROWNE & BRUNE,
For plaintiffs.
WM. L. MARSHALL,
For defendant.

Rule—plea.

And now, here, at this term, to wit, the November term of the said circuit court, in the year of our Lord one thousand eight hundred and forty-eight, comes into the circuit court here as well the said Frederick W. Brune, John C. Brune, and William H. Brune, by *by* their attorneys aforesaid, as the said William H. Marriott, by his attorney aforesaid; and thereupon, on the motion of the said Frederick W. Brune, John C. Brune, and William H. Brune, by their attorneys aforesaid, it is ruled by the court here, that the said William H. Marriott answer to the declaration aforesaid of the said Frederick W. Brune, John C. Brune, and William H. Brune, in the plea aforesaid, or judgment by the court here will be entered against him in default thereof.

Imparlance.

And the said William H. Marriott, by his attorney aforesaid, defends the force and injury, when, &c., and prays leave of the court here to imparle until the first Monday in April next, and then to answer unto the declaration aforesaid of the said Frederick W. Brune, John C. Brune, and William H. Brune, in the plea aforesaid; and to him it is granted. The same day is given to the said Frederick W. Brune, John C. Brune, and William H. Brune, also.

At which said first Monday in April, in the year of our Lord one thousand eight hundred and forty-nine, to which said day the said William H. Marriott had leave to imparle, and then to answer to the declaration aforesaid of the said Frederick W. Brune, John C. Brune, and William H. Brune, in the plea aforesaid, comes again into the circuit court here, as well the said Frederick W. Brune, John C. Brune, and William H. Brune, by their attorneys aforesaid, as the said William H. Marriott, by his attorney aforesaid. And thereupon the parties aforesaid, by their attorneys aforesaid, file in court here the following statement of facts, to wit:

In the circuit court of the United States, for the district of Maryland. April term, 1849.

FREDERICK W. BRUNE, John C. Brune, William H. Brune,
vs.
WILLIAM H. MARRIOTT.

Statement of facts.

It is admitted that the schedule A, herewith filed to be taken as part of this statement, in its 1st, 2d, and 3d columns, correctly exhibits the importations of sugar and molasses by the plaintiffs into the port of Baltimore, between the 8th of February and the 8th of November, A. D. 1847, both inclusive, and likewise the names of the vessels by which, and the places from which, such importations were made, and the dates of the entries of such importations; that column 4 exhibits the kind of goods so imported, and how they were contained; that column 5 exhibits the quantity in pounds of the sugar, and in gallons of the molasses, shipped in the West Indies, as stated in the invoices which accompanied such importations; that column 7 exhibits the dutiable value in foreign currency (including all costs and charges) of the goods mentioned in the said invoices; which in column 8 is charged into American currency, and upon this value duties were computed and exacted by the defendant of the plaintiffs, and paid by them in order to get possession of their said goods, and that the amount of duties so exacted and paid are stated in column 9.

It is further admitted, that all the goods imported by the plaintiffs, as aforesaid, after their arrival and entry at the custom house, were by the direction of the defendant submitted to the examination of weighers and gaugers, officers belonging to the custom-house, and who made returns of the weight and gauge respectively of the goods submitted to them, which returns are correctly exhibited in column 6.

It is further admitted, that if column 8 correctly exhibits the value at the place of shipment of the quantity of goods mentioned in the invoices, including costs and charges, and exhibited in column 5 as having been shipped, then column 10 exhibits the proportionate value at the place of shipment of the diminished quantity of goods, as ascertained by said officers to have arrived in Baltimore, and exhibited in column 6, including their proportionate share of costs and charges. That column 11 exhibits the amount of duty, at 30 per cent. ad valorem, on the goods as valued in column 10; that column 12 exhibits the excess of duties alleged by the plaintiffs to have been overpaid by them, and the aggregate of the sums in this column constitutes the claim, without interest, which they seek to recover in this action.

The plaintiffs also claim interest on the alleged over-payments appearing in column 12 from the time of such payments respectively, and which interest is to be hereafter correctly ascertained.

It is agreed that column 10 of schedule B exhibits the value in American currency of the deficiency of the goods upon arrival, as com-

pared with the invoices, agreeably to the ascertainment of the actual quantity of goods arrived, by the gauger and weigher respectively, no account being taken of costs and charges, except in the case of molasses, the proportion of commission being allowed on that article.

It is also agreed, that column 11 in said schedule exhibits the amount of 30 per cent. on the value of such deficiency so exhibited.

It is further admitted, that the above mentioned deficiency between the quantity of goods which arrived, according to the returns of the Government officers, and that appearing in the invoices, occurred on, and was produced by, the voyage of importation. And it is also admitted, that allowances for damage to sugar and molasses injured by a peril of the sea on the voyage of importation are calculated in the mode contended for by the plaintiffs as the true mode of ascertaining their alleged over-payments.

It is further admitted, that upon the 9th of April, 1847, the plaintiffs addressed and delivered to the defendant the general notice or protest in writing, signed by them, and herewith filed, marked C; and likewise, at the time of the entries of the cargoes of the Uzardo, Sam'l G. Mitchel, Isabella, G. W. Russell, W. J. Watson, and Aristes, respectively addressed and delivered to the defendant a special notice or protest in writing, signed by them, and copies of which protests are *are* herewith filed, marked D.

It is further submitted, whether the protest of the 9th April, 1847, can be applied to the excess of duties claimed to have been paid unjustly upon the cargoes of any vessels on whose cargoes the deficiencies were ascertained and finally adjusted before the date of said protests, and whether it can be applied to the cargoes of those vessels whose deficiencies were not finally adjusted by the impost clerk, and whose duties were not finally charged to the collector in his accounts until after said protest, although said deficiencies were ascertained in fact by the gauger and weigher respectively; and whether such general protest can be applied to any subsequent importations and payments of the plaintiffs in regard to which there was no especial protest.

And it is admitted, that the deficiencies upon all the cargoes arriving before the Sarah Adams had been ascertained by the gauger and weigher respectively, and returned by them to the defendant, and had been finally adjusted by the impost clerk, and that the duties on such cargoes had been charged to the defendant in his accounts with the treasury before the 9th of April, 1847; but it is admitted, that although the gauger and weigher had returned to the defendant the deficiencies on the cargoes of the Sarah Adams, Sebois, and Magnolia, yet that the impost clerk, whose duty it is to compare such returns with the invoices, did not act thereon and ascertain and adjust the true amount of duties due on such cargoes, and report thereon to the defendant, until after the said 9th of April, 1847.

And it is further admitted, that the gauger and weigher did not make their returns of the deficiency in the cargo of the Frances Partridge until the 10th of April, 1847.

It is also admitted, that the custom of the importing merchants of Baltimore in the sale of sugar and molasses is as follows, viz: sugar is sold per pound, i. e., at a given price per hundred pounds, and molasses per gallon, upon the quantity returned by the weigher and gauger as having been imported, without any reference in either case (as to the price) whether a deficiency in quantity has been suffered on the voyage of importation or not, and also that in no case is the cask, [1](sold separately by said importing merchants,) [2](in which the sugar or molasses is contained.)

And it is also admitted, that in all importations of sugar from Porto Rico no charge for casks appears in the invoices, but that in importations of molasses from that island, and of sugar and molasses from Cuba, a separate charge is made for the cask.

It is agreed, that any acts of Congress and the instructions of the Secretary of the Treasury, and his correspondence with the plaintiffs, may be referred to by either party for whatever purpose they may be legally available.

Upon the foregoing statement of facts the questions to be submitted to the court are—

First. Whether the amount of duties, or any part thereof, exacted by the defendant and paid by the plaintiffs, were illegally exacted, by reason of being charged upon the entire amount and value of the goods appearing in the invoices to have been shipped, without any allowance for the deficiency in weight or gauge from the voyage of importation, as shown by the returns of the Government officers; and,

Secondly. Whether the plaintiffs can recover back in this suit the duties so exacted, [or] any part thereof.

If upon these questions the opinion of the court should be in favor of the plaintiffs, then the court shall give judgment for the plaintiffs with costs; but if on these questions the opinion of the court should be in favor of the defendant, then judgment shall be entered for the defendant with costs. And it is further agreed, that if the judgment in this case should be in favor of the plaintiffs, the amount, including interest, for which the judgment shall be entered up, may be hereafter calculated, in conformity with the principles which the court shall decide to govern the case, with liberty to either party to appeal from the judgment of the court, and with the further agreement, as part of this statement, that the court shall be at liberty to draw such inferences from the facts above stated as a jury might or would draw therefrom, and that either party shall hereafter have power to add to this statement any fact admitted by the other party to exist, which may be deemed essential by the court for the proper decision of the above questions.

BROWN & BRUNE, *for plaintiffs.*
W. L. MARSHAL, *for defendant.*

A.

Statement of duties paid on sugar and molasses imported into the port

Date of entry.	Name of vessels.	Where from.	Description of goods. Per entry and per invoice.	Quantity per invoice.	Quantity, per return of officer.
1847.					
Mar. 9	Sarah Adams....	Ponce.....	153 hhds sugar...	180,745 lbs	164,354 lbs
10	Seboris.....	Mayaguez.....	220 do do....	253,301 "	239,794 "
			93 do do....	110,463 "	100,827
			101 do mol'ses		
			2 tierces do	11,420 gs	11,338
			6 bbls do		
May 22	Magnolia, via...	Charleston	210 hhds do		
			10 tierces do	29,295 lbs	26,699
			14 bbls do		
April 2	Frcs. Partridge..	Ponce.....	155 hhds sugar...	186,609 "	172,344
			33 do do....	39,471 "	37,660
			40 do molasses.	4,948 gs	4,794 gs
12	Uzardo.....	Matanzas.....	200 do sugar....	291,624 lbs	272,411 lbs
			266 boxes do....	111,743 "	107,531 "
			50 hhds molasses.	6,378 gs	6,014 gs
9	Oceola.....	Mayaguez.....	205 do sugar	209.685	219,529 lbs
				29,673	
13	Maria.....	Havana	20 do molasses..	2,444 gs	2,374 gs
"	Ontesie.....	do.....	20 do do....	2,796 "	2,682 "
20	S'ml G. Mitchell.	Ponce.....	220 do sugar....	257,661 lbs	232,167
			28 bbls molasses.	.....	1,002
					Charges...
		Add lighterage on	Frcs. Partridge ..	.....	.....
May 3	Isabella.....	Mayaguez.....	124 hhds sugar...	142,572 lbs	129,571 lbs
14	G. W. Russell ..	Arecibo	150 do do	193,490	189,092
			54 bbls do		
26	Gen. Taylor....	do	142 hhds do....	80,161	72,048
				93,933	89,116
			47 bbls do....	12,064	11,214
			35 casks mol'ses.	4,118 gs	4,227
			Add on molasses..	167	.....
27	Vesper	Ponce.....	116 hhds sugar...	111,924	101,622
			43 bbls do....	21,033	20,349
				9,640	9,498
31	Pinta.....	Matanzas.....	136 hhds do....	192,069	183,980
			51 do molasses.	6,669 gs	6,120 gs
27	Emelie.....	Nazuabo	100 hhds sugar		
			50 bbls do	148,026	140,272
			24 casks molasses	2,644	2,782
			Add on do.	138	
June 21	Comet.....	Mayaguez.....	129 hhds sugar...	145.071	138,002
			13 bbls do....	3,338	3,323
			Molasses	3,918	.....

[A.]

of Baltimore by F. W. Brune & Sons, under the tariff of July 30, 1846.

Cost.		Duty exacted 30 per cent.	Reduced cost in U. States.	Duty accruing, 30 per cent.	Excess Claimed.	Int. from payment to April 10th, 1849.
Foreign currency.	Currency of U. States.					
Dolls. cts.	Dolls. cts.	Dolls. cts.	Dolls. cts.	Dolls. cts.	Dolls. cts.	Dolls. cts.
9,645 81	8,585	2,575 50	7,806 80	2,342 04	233 46	29 18
13,281 88	11,816 60	.....	11,186 87			
.....	5,526 15	.....	5,044 08			
.....	1,664 25	.....	1,571 09			
8,078 06	19,007	5,702 10	17,802	5,341 60	361 49	44 58
3,851 18	3,851	1,155 30	3,510	1,053	102 30	12 60
13,060 86	9,597	2,879 10	10,797 61	3,239 28 979 36	257 42	31 29
1,135 75	3,038	911 40				
11,242 84 4,817 16 827	16,887	5,066 10	15,911 88	4,773 56	292 54	35 06
11,161 30	11,405	3,421 50	10,461	3,138 30	283 20	34 01
336 18	337	101 10	320 80	96 24	4 86	
364	364	109 20	342 12	102 64	6 56	
14,151 77 168 749 98	On sugar only 13,258 10	3,977 40	11,946 30	3,583 89	393 54	46 63
18 75	13,428	4,028 40				
7,719 19	6,861	2,058 30	6,235 40	1,870 62	187 68	21 84
11,182 75	9,571	2,871 30	9,353 60	2,806 08	65 22	7 44
3,858	On sugar only 3,297 50 4,499 50 935	....	2.963 30 4,259 40 905			
			8,127 70	2,438 31	180 99	
6,066 82 29 19 6,469 63 1,107 50 458 05	8,731	2,619 30				
.....	7,152	2.145 60	6,593 90	1,978 17	167 43	
.....	7,364	2,209 20	6,538	1,961 40	86 40	
Diff. allowed on sugar..	6,826	2,047 80				
6,319 83	Sugar only 5,624 46	1,687 20	5,367 30	1,600 19	87 13	
589 10 22 63	6,161	1,848 30				
6,651 10 154 38 744 17	Sugar 6,085	1,825 50	5,671 50	1,701 45	124 05	

A.

Statement of duties paid on sugar and molasses imported into the port

Date of entry.	Name of vessels.	Where from.	Description of goods.		
			Per entry and per invoice.	Quantity per invoice.	Quantity, per return of officer.
1847.					
Mar. 9	Sarah Adams....	Ponce.....	153 hhds sugar...	180,745 lbs	164,354 lbs
10	Seboris.....	Mayaguez.....	220 do do....	253,301 "	239,794 "
			93 do do....	110,463 "	100,827
			101 do mol'ses		
			2 tierces do	11,420 gs	11,338
			6 bbls do		
May 22	Magnolia, via...	Charleston	210 hhds do		
			10 tierces do	29,295 lbs	26,699
			14 bbls do		
April 2	Frcs. Partridge..	Ponce.....	155 hhds sugar...	186,609 "	172,344
			33 do do....	39,471 "	37,660
			40 do molasses.	4,948 gs	4,794 gs
12	Uzardo.....	Matanzas.....	200 do sugar....	291,624 lbs	272,411 lbs
			266 boxes do....	111,743 "	107,531 "
			50 hhds molasses.	6,378 gs	6,014 gs
9	Oceola.....	Mayaguez.....	205 do sugar	209,685 / 29,673	219,529 lbs
13	Maria.....	Havana	20 do molasses..	2,444 gs	2,374 gs
"	Ontesie.....	do.....	20 do do....	2,796 "	2,682 "
20	S'ml G. Mitchell.	Ponce.....	220 do sugar....	257,661 lbs	232,167
			28 bbls molasses.	.....	1,002
					Charges...
		Add lighterage on	Frcs. Partridge ..	.....	.....
May 3	Isabella.....	Mayaguez.....	124 hhds sugar...	142,572 lbs	129,571 lbs
14	G. W. Russell ..	Arecibo	150 do do	193,490	189,092
			54 bbls do		
26	Gen. Taylor....	do	142 hhds do....	80,161	72,048
				93,933	89,116
			47 bbls do....	12,064	11,214
			35 casks mol'ses.	4,118 gs	4,227
			Add on molasses..	167	.....
27	Vesper	Ponce.....	116 hhds sugar...	111,924	101,622
			43 bbls do....	21,033	20,349
				9,640	9,498
31	Pinta.....	Matanzas.....	136 hhds do....	192,069	183,980
			51 do molasses.	6,669 gs	6,120 gs
27	Emelie.....	Nazuabo	100 hhds sugar		
			50 bbls do	148,026	140,272
			24 casks molasses	2,644	2,782
			Add on do.	138	
June 21	Comet.....	Mayaguez.....	129 hhds sugar...	145,071	138,002
			13 bbls do....	3,338	3,323
			Molasses	3,918	.....

[A.]

of Baltimore by F. W. Brune & Sons, under the tariff of July 30, 1846.

Cost.		Duty exacted 30 per cent.	Reduced cost in U. States.	Duty accruing, 30 per cent.	Excess Claimed.	Int. from payment to April 10th, 1849.
Foreign currency.	Currency of U. States.					
Dolls. cts.	Dolls. cts.	Dolls. cts.	Dolls. cts.	Dolls. cts.	Dolls. cts.	Dolls. cts.
9,645 81	8,585	2,575 50	7,806 80	2,342 04	233 46	29 18
13,281 88	11,816 60	.....	11,186 87			
.....	5,526 15	.....	5,044 08			
.....	1,664 25	.....	1,571 09			
8,078 06	19,007	5,702 10	17,802	5,341 60	361 49	44 58
3,851 18	3,851	1,155 30	3,510	1,053	102 30	12 60
13,060 86	9,597	2,879 10	10,797 61	3,239 28 979 36	257 42	31 29
1,135 75	3,038	911 40				
11,242 84 4,817 16 827	16,887	5,066 10	15,911 88	4,773 56	292 54	35 06
11,161 30	11,405	3,421 50	10,461	3,138 30	283 20	34 01
336 18	337	101 10	320 80	96 24	4 86	
364	364	109 20	342 12	102 64	6 56	
14,151 77 168	On sugar only 13,258 10	3,977 40	11,946 30	3,583 89	393 54	46 63
749 98						
18 75	13,428	4,028 40				
7,719 19	6,861	2,058 30	6,235 40	1,870 62	187 68	21 84
11,182 75	9,571	2,871 30	9,353 60	2,806 08	65 22	7 44
	On sugar only					
3,858	3,297 50	.....	2,963 30			
	4,499 50	.....	4,259 40			
	935	.....	905			
			8,127 70	2,438 31	180 99	
6,066 82						
29 19	8,731	2,619 30				
6,469 63						
1,107 50						
458 05	7,152	2,145 60	6,593 90	1,978 17	167 43	
.....	7,364	2,209 20	6,538	1,961 40	86 40	
Diff. allowed on sugar..	6,826	2,047 80				
	Sugar only					
6,319 83	5,624 46	1,687 20	5,367 30	1,600 19	87 13	
589 10 22 63	6,161	1,848 30				
6,651 10						
154 38	Sugar					
744 17	6,085	1,825 50	5,671 50	1,701 45	124 05	

[A.]—*Continued.*

Date of entry.	Name of vessels.	Where from.	Description of goods.		
			Per entry and per invoice.	Quantity per invoice.	Quantity per return of officer.
1847.					
June 21	Factor.....	Cienfugos.....	145 hhds sugar 18 do do	243,196	231,806
				22,950	
				40,626	
28	Wm. J. Watson.	Ponce.....	193 do do 3 bbls do	161,328 2,223	
			Omitted.....	227,135 lbs	215,533
"	Arietes.....	do.....	126 hhds do 111 bbls do	176,187	165,627
			Less error in extension of invoice.....		
July 10	Gen. Lincoln....	Guayanilla.....	217 hhds sugar...	238,041	223,144
			20 bbls do....	4,740	3,944
			Molasses.....	6,509 gs	6,575
			Add on do.....	66	
	Emma	Mayaguez.....	20 hhds sugar...	.....	.....
			5 do do		
			66 do do	132,245	122,951
			25 do do		
21	Imogene	do.....	194 do do....	229,568	211,165
Aug. 5	Samuel.....	do.....	30 do do....	.....	.....
			37 do do....	.....	.....
			10 do do....	.....	.....
			5 do do....	.....	.....
			15 do do....	.....	.....
			5 do do....	.....	.....
			98 do do....	216,037	206,804
Sept. 17	Penchita.....	do.....	99 do do....	107,571	100,302
27	Hope	Suga la Grande..	24 do do....	36,409	35,940
Nov. 8	S'ml. L. Mitchell	Mayaguez.....	127 do do....	134,944	129,596

[A.]—*Continued.*

Cost.		Duty exacted, 30 per cent.	Reduced cost in U. States.	Duty accruing, 30 per cent.	Excess claimed.	Int. from payment to April 10th, 1849.
Foreign currency.	Currency of U. States.					
Dolls. cts.	Dolls. cts.	Dolls. cts.	Dolls. cts.	Dolls. cts.	Dolls. cts.	Dolls. cts.
8,983 50	8,896	2,668 80	8,478 90	2,543 67	125 13	
9,616 73	8,559	2,567 70	8,202 50	2,460 75	106 95	11 47
8,172 16	7,273					
91	91					
.....	7,182	2,154 60	6,751 90	2,025 57	129 03	13 83
	Sugar only					
9,231 49	8,446 87	2,534 01	7,900 74	2,370 22	163 79	
1,194 13	9,539 44 / 7 89	2,864 10				
.....	886	265 80				
	222	66 20				
5,780	2,923	876 90				
	1,107	332 10	4,762 50	1,478 25	112 65	
10,076	8,956	2,686 80	8,220 60	2,466 18	220 62	
.....	1,500	450				
.....	1,850	555				
.....	506	151 80				
.....	250	75				
.....	750	225				
.....	293	87 90				
3,672 73	3,346 80	1,003 80	3,119 90	935 95	67 83	
1,410 18	1,410	423	1,392	417 60	5 40	
6,324 91	5,647	1,694 10	5,423 90	1,627 17	66 93	

[B.]

Date of entry.	Name of vessels.	Where from.	Description of goods. Per entry and per invoice.	Quantity per invoice.	Quantity per return of officer.
1847					
Feb. 8	J. E. Ridgway ..	Arecibo	144 hhds sugar 25 bbls do	181,923	167,287 lbs 6.692 "
26	United States ...	Ponce.....	192 hhds do	224,235 "	206,266 "
"	San Jacinto.....	Havana.....	94 do molasses ..	12,855 gs	11,740 gs
27	Creed	Cardenas.....	360 do 24 tierces do 15 bbls do	47,448 "	43,258 "
Mar. 9	Sarah Adams....	Ponce.....	153 hhds sugar...	180,745 lbs	164,354 lbs
10	Sebois	Mayaguez	220 do do ...	253,301 "	239,794 "
			93 do do ...	110,463 "	100,827 "
			101 do, 3 tces, & 6 bbls mol'ses	11,420 gs	11,338 gs
22	Magnolia ....via	Charleston.....	210 hds, 10 trces 14 bbls mol'ses	29,295 gs	26,699 "
April 2	Frs. Partridge...	Ponce	155 hhds sugar...	186,609 lbs	172.344 lbs
			33 do do ...	39,471 "	37,660 "
			40 do molasses	4,948 "	4,794 gs
12	Uzardo	Matanzas	200 do sugar...	291,624 lbs	272.411 lbs
			266 boxes do ...	111,743 lbs	107.531 "
			50 hhds molasses	6,378 gs	6,014 gs
9	Osceola	Mayaguez	205 do sugar	209.685 29.673	219,529 lbs
13	Maria.....	Havana.....	20 do molasses	2,444 gs	2.374 gs
"	Ontsie	do	20 do do	2,796 lbs	2,682 lbs
20	Sm'l G. Mitchell.	Ponce	220 do sugar...	257,661 lbs	232,167 "
					charges
			28 bbls molasses.	.....	1,002 gs
			add lighterage	on Sm'l G.	Mitchell....
May 3	Isabella.....	Mayaguez.....	124 hhds sugar...	142,572 lbs	129,571 lbs
14	G. D. Russell ...	Arecibo	150 do do 54 bbls do	193,490 lbs	189,092 "
26	Gen. Taylor....	do	142 hhds do 54 bbls do	186,158 "	172,378
			35 bbls molasses.	.....	4 227
				add on	molasses ..
27	Vesper	Ponce	116 hhds sugar	111,924 lbs 21,033 "	101,622 lbs 20,349 "
			43 bbls do ...	9,640 "	9,498 "
"	Emelie	Naguabo	100 hhds do 50 bbls do	148,026 "	140,272 "
			24 casks molasses	.....	.....
				add on	molasses ..
June 22	Comet.....	Mayaguez	129 hhds sugar...	145,071 lbs	138,002 lbs
			13 bbls do ...	3,338 "	3,323
			36 casks molasses	3,918 gs	.....
May 31	Pinta.....	Matanzas	136 hhds sugar...	192.069 lbs	183,980 lbs
			51 do molasses	6,669 gs	6,120 gs
June 22	Factor	Cienfuegos	145 hhds sugar 18 do do	243,196 lbs	231,806 lbs
28	Wm. J. Watson.	Ponce	193 do do 3 bbls do	22,959 " 2,223 " 40,626 " 101,328 "	215,533

[B.]

Foreign currency.	Currency of U. States.	Duty exacted 30 per cent.	Excess value in U. States.	Excess claimed
Dolls. cts.	Dolls. cts.	Dolls. cts.	Dolls. cts.	Dolls. cts.
8,759 65	7,684	2,305 20	314	94 20
11,150 67	10,203	3,060 90	775	232 50
1,413 00	1,413	423 90	52	15 60
5,121 75	5,122	1,536 60	195	58 50
9,645 81	8,585	2,575 50	738	221 40
21,383 00	19,007	5,702 10	587 409 11 = 1,007	302 10
3,851 18	3,851	1,155 30	181	54 30
13,060 86	12,635	3,790 50	24	7 20
1,135 75				
11,282 44	.....	.....	697	209 10
4,817 16	.....	.....	140	42
827 00	16,887	5,066 10	26	7 80
11,161 80	11,405	3,421 50	881	264 30
1,668 90				
336 38	337	101 10	5	1 50
364 00	364	109 20	8	2 40
14,151 77	on sugar only.			
749 98	.....	.....	1,246	373 80
168 00				
18 75	13,428	4,028 40	.....	
7,719 00	6,861	2,058 30	584	175 20
11,182 75	9,571	2,871 30	209	62 70
6,066 82	on sugar only	.....	543	162 90
3,858 11				
29 19	8,731	2,619 30		
6,469 33				
1,107 50				
458 65	7,152	2,145 60	540	162
6,319 00				
589 10				
22 63	6,161	1,848 30	276	82 80
sugar only	.....	.....	268	80 40
.....	7,364	2,209 20	264	79 20
difference allowed.				
8,983 56	8,896	2,668 80	350	105
9,616 73	8,559	2,567 70	415	124 50

[B.]—*Continued.*

Date of entry.	Name of vessels.	Where from.	Description of goods. Per entry and per invoice.	Quantity per invoice.	Quantity per return of officer.
1847					
June 28	Arietes.....	Ponce.....	126 hhds sugar 111 bbls do less error in extension	176,187 lbs	165,627 lbs of invoice..
July 10	Gen. Lincoln....	Guayamilla.....	217 hhds sugar...	238,041 lbs	223,144 lbs
			20 bbls do ...	4.740 "	3,944 "
			60 casks molasses	6,509 gs	.....
				add on do.	6,574
"	Emma.....	Mayaguez	20 hhds sugar 5 do do 66 do do 25 do do	132,245 lbs	122,951 lbs
21	Imogene	do	194 do do ...	229,568 "	211,165 "
Aug. 5	Samuel.....	do	30 do do ...	.....	.....
			37 do do ...	.....	.....
			10 do do ...	.....	.....
			5 do do ...	.....	.....
			15 do do ...	.....	.....
			5 do do ...	.....	.....
			do ...	216,037	206.804
Sept. 17	Penchita	do	99 do do ...	107,571	100.302
25	Hope.....	Sagua le Grand..	24 do do ...	36,409	35 940
Nov. 8	S. L. Mitchell...	Mayaguez	127 do do ...	134,944	129,596

[B.]—*Continued.*

Foreign currency.	Currency of U. States.	Duty exacted 30 per cent.	Excess value in U. States.	Excess claimed
Dolls. cts.	Dolls. cts.	Dolls. cts.	Dolls. cts.	Dolls. cts.
8,172 16	7,273			
102 00	91	2,154 60	406	121 80
	7,182			
9,231 49				
.....	9,539			
1,194 13	add 7 89	2,864 10	514	154 20
	886	265 80		
5,780 00	222	66 60	333	99 90
	2,923	876 90		
	1,107	332 10		
10,076 00	8,956	2,686 80	665	199 50
.....	1,500	450		
.....	1,850	555		
.....	506	151 80		
.....	250	75 00		
.....	750	225		
.....	293	87 90		
.....	.....	.....	353	105 90
3,672 73	3,346	1,003 80	215	64 50
1,410 80	1,410	423	15	4 50
6,324 91	5,647	1,694 10	207	62 10

Protest.—C. (Copy.)

BALTIMORE, *9th April*, 1847.

Genl. WM. H. MARRIOTT,
Collector of the port of Baltimore.

DEAR SIR: Having been informed that it is the intention of the Secretary of the Treasury not to make allowance on the payment of duties on such articles as may result here less in quantity, from loss in weight or leakage, than at the time of shipment, for instance, sugar, molasses, &c., and on which a duty ad valorem of the invoice is exacted, we hereby protest against the payment of such entire amount of duty, being of opinion that the law at present in force authorizes an allowance for actual loss in weight or gauge, as shewn by the difference in the invoice and the returns of the weighers and gaugers of such cargoes after delivery in this port.

We desire that this protest should extend to all our importations of sugar and molasses since the operation of the present tariff, viz:

Water Witch, from Aricibo, entered 17th November, 1846.
J. E. Ridgway, from Aricibo, entered 8th February, 1847.
Juliet, from S. Thomas, entered 15th February, 1847.
United States, from Ponce, entered 26th February, 1847.
San Jacinto, from Havana, entered 26th February, 1847.
Creed, from Cardinas, entered 1st March, 1847.
At New York, O. Thompson, from Aricibo, entered 3d March, 1847.
At New York, Sophia, from Ponce, entered 4th March, 1847.
At New York, Sarah Adams, from Ponce, entered 9th March, 1847.
At New York, Seboris, from Mayaguez, entered 10th March, 1847.
Francis Partridge, from Ponce, entered 2d April, 1847, and
Oceola, from Maynguez, entered this day.

The protest upon our previous importations was not made at the time of entry, because we were informed that a fair allowance would be made, but regret now to learn that the original instructions of the Secretary of the Treasury have been countermanded. We are credibly informed that allowances have, in cases similar to the above, actually been made in neighboring places, and we think ourselves entitled to equal consideration.

We have the honor to be, dear sir, your most obedient servants,
(Signed) F. BRUNE & SONS.

(*Schedule D.*)

1847, April 12. Brig Uzardo, Mereen, master, from Matanzas, 200 hhds. sugar, 266 boxes sugar, 50 hhds. molasses.

Copy of protest.

We hereby protest against the payment of duty upon the entire amount of the above invoice, without allowance here for loss in weight or gauge since date of shipment.
(Signed) F. W. BRUNE & SONS.

1847, April 20. Brig S. L. Mitchell, Gaskill, master, from Ponce, Porto Rico, 229 hhds. sugar.

Copy of protest.

We hereby protest against the payment of duty upon the entire amount of the above invoice, without allowance here for loss in weight or gauge since date of shipment.

(Signed) F. W. BRUNE & SONS.

1847, May 3. Brig Isabella, Matthews, master, from Mayaguez, 124 hhds. sugar.

Copy [of] protest.

We hereby protest against payment of duty upon the entire amount of the invoice of the above cargo of sugar, without allowance for loss in weight since date of shipment.

Baltimore, 3d May, 1847.

(Signed) F. W. BRUNE & SONS.

1847, May 14th. Brig G. W. Russell, Parker, master, from Aricibo, 150 hhds. sugar, 54 bbls. sugar.

Copy of protest.

We hereby protest against the payment of duty upon the entire amount of invoice of the above cargo, without allowance here for loss in weight, especially as there is a charge in the invoice of $255 56 for 5,045 lbs. of sugar, "loss in weight from drainage while stored" previous to being shipped.

Baltimore, 14th May, 1847.

(Signed) F. W. BRUNE & SONS.

1847, June 28th. Brig Wm. J. Watson, Sterling, master, from Ponce, P. R., 193 hhds. 3 bbls. sugar.

Copy of protest.

We hereby protest against the payment of duty upon the entire amount of the above invoice, without allowance here for loss in weight or gauge since date of shipment.

(Signed) F. W. BRUNE & SONS.

1847, June 28th. Schooner Arietes, Hamlin, master, from Ponce, P. R., 126 hhds. 11 bbls. sugar.

Copy of protest.

We hereby protest against the payment of duty upon the entire amount of the above invoice, without allowance here for loss in weight or gauge since date of shipment.

(Signed) F. W. BRUNE & SONS.

Invoice of 220 hhds. sugar shipped by order of Messrs. Schroder & Co., of Mayaguez, on board the Am. schooner Sam'l L. Mitchell, J. S. Gaskill, mr., for acc't and risk of whom it may concern, and consigned to Messrs. F. W. Brune & Sons, of Baltimore, viz.:

M. L.	1 a 33	33 hhds.	sugar,	43,560,	4,356,	39,204		
Catalana	1 a 50	50 do	do	67,850,	6,785,	61,065	a 5¼	10,544 49
La Flaca	1 a 50	50 do	do	63,180,	6,318,	56,862		
Feliz	1 a 30	30 do	do	38,430,	3,843,	34,587		
R.	1 a 5	5 do	do	6,050,	605,	5,445	a 5¼	285 86
Roca. Ponce	1 a 18	18 do	do	22,900,	2,290,	20,610	5¼	3,196 21
P. R.								
P. V.	1 a 32	32 do	do	41,670,	4,167,	37,503		
P. S.	½ ½	2 do	do	2,650,	265,	2,385	5¼	125 21
		220 hhds.		286,290 lb.	28,629 lb.	257,661 lb.		$14,151 77

Charges.

Duties of exportation - - - -	$330 68	
Lighterage of 57 hhds., from Guayanilla	42 75	
Weigh master of the custom h. - -	12 88	
Stowing 90 hhds. of scantling - -	4 00	
Negro hire and cooperage - - -	8 00	
Consul's certificate - - - -	2 25	
		400 56
		14,552 33
Commission, 2½ p. c.		363 80
		$14,916 13

KOHL, PATEN & Co.
Ponce, P. R. 31st March, 1847.

Ex'd. J. G. A.

243

Invoice of 200 hhds. Musco., and 226 boxes yellow sugar, and 50 hhds. Molasses, shipped by Burnham, Schroeyer & Co., pr. brig Uzardo, Milton Moreen, master, for Baltimore, for ac. and risk of whom it may concern, and consigned to Messrs. F. W. Brune & Sons.

R. V.					
1-13	13 hhds. Musco. sugar, whg. nt.	21,317 lb.	*a* 6¾ rs.	706 1	
14-51	38 " " " " "	34,081	*a* 6	1,622 3½	
52-162	111 " " " " "	163,625	*a* 6½	5,317 7½	
163-186	24 " " " " "	32,616	*a* 7	1,141 4½	
189-200	14 " " " " "	19,985	8	799 3½	
		291,624			
	200 hhds. *a* 5 - - - -	- - - -		1,000	10,587 03
1-166	166 boxes yellow sugar, whg. nt.	2,796 *a* 14	7 rs.	2,447	
201-300	100 " " "	1,673 *a* 4th	6 rs.	1,254 7	
		4,469 18			
	266 boxes *a* 3¼ - - - -	- - - -		864 4	4,566 03
	50 hhds. molasse, gauging 4800 galls. or 872 8-11 kegs		3 rs.	327 2	
	1578 "	287	3	107 5	
	6378 casks *a* 5½ c. -	- -		350 6	775 05
	Charges.				15,939 03
	Export duty 92½ c. p. hhd. $185; and 37 c. p. box, 98 3¼			283 3½	
	Laboring, carting, and shipping, 4 rs. pr. hhd. $100, and 2 rs. per box, $66 4 - - - - - - -			166 4	
	Shed dues, 2½ a. 81.7.6½; brok'g ½ p. c. 51.53 6; consul's cost, 2.1 - - - - - - - - -			84 4½	535 04
					$16,474 07
	Commission 2½ p. c. - -			–	411 07
					$16,886 06

(Signed BURNHAM, SCHROEYER, & Co.

Matanzas, March 24th, 1847.

Invoice of 80 hhds. and 47 barrels of sugar, and 35 casks of molasses, shipped by Kerbright & Hincy, on board the American schooner General Taylor, R. D. White, master, bound for Baltimore, and there consigned to Messrs. F. W. Brune & Sons, for account and risk of the shippers.

M $\frac{1}{8}\frac{1}{1}$, 80 hhds. sugar wg. 93,933 nt. -	$4\frac{1}{2}$	–	$4,226 98
M $\frac{1}{4}\frac{1}{7}$, 47 bbls. sugar, wg. 12,064 nt. -	$4\frac{1}{2}$	–	542 88
35 casks molasses, g. 4,118 g. nt. -	$17\frac{1}{2}$	–	700 06
			$5,469 92
Charges.			
Duties on 105,997 lbs. nt. - - -	$9\frac{3}{8}$	99 37	
1 p. ct. or duty - - - -	–	99	
		$100 36	
$\frac{1}{4}$ part in sp. gold at 14 per cent. - -	–	3 61	
		103 97	
Lighterage, on 115 casks - - -	–	115 00	
Do. on 47 bbls. - - - -	–	10 00	
Cooperage on 80 hhds. and 47 bbls. -	–	12 70	
Do. on 35 casks molasses - - -	–	8 75	
Labor, rolling, weighing, and gauging -	–	20 25	
35 casks - - - - - -	–	175 00	
Consul's certificate - - - -	–	2 28	447 95
			5,917 87
Commission $2\frac{1}{2}$ per cent. - -	–	–	148 95
			$6,066 82

E. and O.—Ex.

Arecibo, P. R., 11th May, 1847.

KERBRIGHT & HINCY.

Invoice of 62 hhds. sugar, shipped by Kerbright & Hincy on board the American schooner General Taylor, R. D. White, master, bound for Baltimore, there consigned to F. W. Brune & Sons, and for account and risk of Cornelius H. Kerbright, esq., of Matanzas.

M K } 19 hhds. sugar, wg. 24,053 lbs. nt. -	4½	–	$1,082 38
N. Manero, 15 do do, 20,585 lbs. nt. -	4½	–	926 32
T. Stewart, 28 do do, 35,523 lbs. nt. -	4½	–	1,598 23
Las Clamo			
62 hhds. sugar, wg. 80,161 lbs. nt. -	–	–	3,607 23
Charges.			
Duties on 80,161 lbs. nt. - - -	9⅜	75 15	
1 p. ct. balanza duty - - - -	–	75	
		$75 90	
¼ part in Sp. gold - - - - -	–	2 65	
		78 55	
Lighterage on 62 hhds. - - - -	–	62 00	
Cooperage on do - - - -	–	6 20	
Labor, rolling, and weighing - - -	–	7 75	
Consul's certificate - - - -	–	2 28	156 78
			3,764 01
Commissions 2½ p. ct. - - -	–	–	94 10
	–	–	$3,858 11

E. and O. E.

Arecibo, P. R., 11th May, 1847.

KERBRIGHT & HINCY.

Statement of account under the decision of the United States circuit court, in the case of Messrs. F. W. Brune & Sons vs. William H. Marriott, collector of the customs for the port of Balimore, for allowance claimed on loss of quantity in sugar and molasses on the voyage of importation.

		Dolls.	*Int't.*
1847.			
March 9	Sarah Adams	233 56	$30 49
" 10	Seboris	347 23	45 43
" 22	Magnolia	102 36	13 16
April 15	Francis Partridge	257 40	32 17
" 12	Uzardo	293 80	36 91
" 19	Osceola	283 40	35 28
" 13	Maria	4 86	1 37
" 13	Ontsie	6 56	
" 20	Sam'l L. Mitchell	393 66	48 88
May 3	Isabella	187 68	22 88
" 14	G. W. Russell	65 26	7 84
" 26	General Taylor	174 84	20 66
" 27	Vesper	167 44	19 76
Oct. 11	Pinta	102 76	9 82
May 27	Emelie	88 28	10 76
June 22	Comet	87 02	9 90
" 22	Factor	125 00	14 23
Oct. 16	W. J. Watson	131 17	12 46
Sept. 16	Arietes	129 14	12 91
July 15	Gen. Lincoln	163 80	18 02
" 20	Emma	108 33	11 82
" 29	Imogene	215 38	23 17
Sept. 19	Samuel	103 02	10 38
" 17	Pancheta	67 83	7 30
" 25	Hope	5 44	
Nov. 8	S. L. Mitchell	67 14	6 11
1848.			
Jan. 5	Eldorado	37 42	3 05
Feb. 3	Charlotte	109 12	8 40
April 25	Eleanor	79 90	5 06
March 9	Eldorado	64 88	4 75
April 11	Enterprise	173 44	11 39
" 17	Harbinger	68 37	4 40
May 6	Tangent	123 23	7 57
" 29	Ellen	19 65	1 15
April 20	Elizabeth	26 02	1 67
July 4	Eldorado	109 81	5 41
Sept. 14	Helen	33 95	1 38
		$4,758 25	$516 04

The undersigned, appointed by the parties in the above stated case, concur in the annexed statement of allowance due to plaintiffs, viz:

Principal - - - - - - -	$4,758 25
Interest - - - - - - -	516 04
	$5,274 29

ROB. BINES, *in behalf of the Collector.*
ADOLPH AHRENS, *in behalf of F. W. Brune & Sons.*

BALTIMORE, *May* 19, 1849.

BRUNE & SONS
vs.
WILLIAM H. MARRIOTT. } In circuit court, U. S., for Maryland district.

Mr. Spicer will enter judgment in the above case in conformity with the opinion of the court, for the sum of $5,274 29, with interest from the 19th of May, 1849, being the amount of allowance agreed upon by the counsel of the respective parties.

WM. L. MARSHALL.
BROWN & BRUNE, *for Plaintiffs.*

Copy of a letter addressed by F. W. Brune & Sons to the Hon. R. J. Walker, Secretary of the Treasury, in Washington city, dated

BALTIMORE, *June 28th*, 1847.

SIR: We are informed by the Collector of the Customs of this port, that he will refund us, on our importions of molasses, the differences of duty calculated at 30 per cent. ad valorem on invoice amount, and what the same would be, taking the nett gauge of the casks here as the basis; in other words, allowing for the loss of molasses on the voyage. The Collector says, that he will make this return on importations made from 1st May last; now, we have been protesting against the full duty, which has been exacted from us since a length of time, and we would respectfully inquire whether, in your opinion, we are not entitled to a similar return on all our importations since 1st December last, when the present tariff went into operation. If such is your decision, will you direct instructions to that effect to be given to the Collector.

We would further respectfully ask whether you do not think the duty upon sugar, (especially Muscovado, which from its nature is subject to a considerable loss on the voyage,) should be estimated in the same manner as that on molasses, namely, calculating 30 cents ad valorem on the cost of the weight landed here, not on the weight shipped; thus making an allowance for an unavoidable drainage, or rather only charging duty on the pounds of sugar actually brought into the country and into consumption.

Hoping you will favor us with an answer to our foregoing inquiries, we remain, &c., &c.

Letter from the acting Secretary of the Treasury to F. W. Brune & Sons, dated August 9th, 1847.

TREASURY DEPARTMENT, *August 9th*, 1847.

GENTLEMEN: In reply to your letter of the 6th instant, covering copy of your former letter of the 28th of June last asking to have the principles of the circular of the 27th of May last, applied in the case of importations of molasses made prior to the date of said circular, I beg respectfully to refer you to the enclosed copy of the decision of the Department on a similar application from Moses Taylor and others, importers of molasses at the port of New York, dated the 16th ultimo.

I would add that the Department has not deemed it expedient to apply the principles of the circular of the 27th May last to the importations of sugar.

Very respectfully,

McC. YOUNG,
Acting Secretary of the Treasury.

Messrs. F. W. BRUNE & SONS, Baltimore.

Letter from the Secretary of the Treasury to Moses Taylor and others, importers of molasses, New York.

TREASURY DEPARTMENT, *July 16th*, 1847.

GENTLEMEN: The Department duly received the letter signed by yourselves and other importers of molasses, at the port of New York, dated the 2d ultimo, asking to have the principles established by the circular instructions of the 27th of May last, for estimating the loss or deficiency in the article of molasses occasioned by fermentation, stress of weather, or accident during the voyage of importation, applied to all importations of molasses made prior to the date of said instructions, running back to the day the present tariff went into operation.

In reply, I would respectfully state that the Department does not feel authorized, under the circumstances of the case, to give a retrospective effect to the regulations referred to as desired in your application.

Very respectfully,

R. J. WALKER,
Secretary of the Treasury.

Messrs. MOSES TAYLOR and others,
importers of molasses, New York.

Letter from the Secretary of the Treasury to the Collector of the Customs, New Orleans.

TREASURY DEPARTMENT, *January 30th*, 1847.

SIR: In reference to the subject stated in your letter of the 7th instant, respecting allowances for deficiencies and invoice value, I would remark, that the law makes no distinction between articles subject heretofore to specific rates of duty, but now liable to ad valorem duty, in the mode of ascertaining quantities with a view to fix the values on which the duties are to be assessed. Whatever allowance, therefore, would

have been made under former laws on articles subject to specific duty, would inure under existing laws on articles of the same description now liable to ad valorem rates of duty. Consequently, where the specific duty was heretofore levied on the actual quantity landed, as ascertained from actual weighing, gauging, or measuring, the same course is to be pursued in regard to the same description of articles under existing rates of duty.

If, therefore, the quantity of any article falls short of the amount given in the invoice on due ascertainment, as before stated, an abatement of the duties to the extent of the deficiency should be made. If, on the contrary, it be found to exceed the quantity stated in the invoice, the aggregate cost or value must be made to correspond with such increase, and the duties estimated and assessed accordingly.

The allowances authorized by the 58th and 59th sections of the act of 2d March, 1799, chap. 128, to which you refer, are still to be allowed. It is, therefore, to be observed, that the allowance made in the 59th section of two per cent. for leakage, applies *solely* to the case of *liquors* known in commerce as such, and as contradistinguished from liquids of any other description.

I am, very respectfully, your obedient servant,

R. J. WALKER,
Secretary of the Treasury.

DENIS PRIEUR, Collector of the Customs, New Orleans.

Letter from the Secretary of the Treasury to the collector of the customs, Baltimore.

TREASURY DEPARTMENT,
February 3d, 1847.

SIR: For your information and government in regard to allowances to be made for deficiencies and leakage on imports, where quantities are ascertained by weighing, gauging, or measuring, I transmit a copy of my instructions to the collector of New Orleans, of the 30th ultimo, fixing the principles on which said allowances are to be made.

I am, very respectfully, your obed't serv't,

(Signed) R. J. WALKER,
Secretary of the Treasury.

WM. H. MARRIOTT, esq.,
Collector of the Customs, Baltimore.

E. MAG. TELEGRAPH,
March 24, 1847, *Washington.*

SIR: By direction of the Secretary of the Treasury, you are requested to make no allowances for deficiencies to invoices until further advised.

(Signed) Mc. YOUNG, *Chief Clerk.*

L. M. CHASTEAU, *U. S. Tel.*

Circular to collectors and other officers of the customs.

TREASURY DEPARTMENT, *March* 24, 1847.

The attention of the Department having been specially called to the subject of allowances for deficiency, drainage, leakage, and breakage under the existing laws, and particularly in reference to the provisions of the 58th and 59th sections of the act of 2d March, 1799, it is decided that in all cases where allowances are claimed, under said sections or either of them, the appraisers or other proper officers shall first ascertain whether any deficiency, damage, leakage, or breakage has occurred during the voyage of importation by stress of weather or other accident at sea, and if so, and the actual leakage, deficiency, or breakage cannot be otherwise ascertained, then to make the allowance as the case may be, for draught, tare, leakage or breakage to the extent authorized by said sections; but if said damage, deficiency, leakage, or breakage, so occurring as before mentioned, shall be found by said appraisers or other officers, to be less than the amount authorized by said sections, then the allowance shall only be for the actual damage, deficiency, leakage, or breakage; and if the amount be ascertained to be actually greater than the amount allowed in said sections, the actual damage, deficiency, leakage, or breakage shall still be allowed, subject to limitations and restrictions imposed by former circulars.

It must be remembered that draught can be allowed only on articles imported in bulk, and tare on articles imported in casks, barrels, bags, boxes, or other packages, and leakage in the case of liquors; but when there is an allowance for tare, draught, leakage, or breakage, it must be confined to a separate allowance for one of them, and cannot be extended to two or more.

Under the 58th section, the allowances for draught or tare are only permitted on "articles subject to duty by weight;" and under the 59th section the allowance for leakage and breakage is confined to liquors "subject to duty by the gallon;" and there are no duties imposed by the act approved 30th July, 1836, either by weight or gallon; it is an extremely liberal construction to allow in any case any operation whatever to those sections, even to the limited extent permitted by these instructions.

(Signed) R. J. WALKER,
Secretary of the Treasury.

June 5th, 1848.

Your attention is called to circular instructions of defendant, 24th March, 1847, on subject of allowance for deficiency, &c. It is represented that at some of the ports, notwithstanding those instructions, allowance is made for tare and draught beyond actual deficiency. This must in no case be permitted; nor can any allowance be made in any case, whether under name of tare, or draught, or otherwise, beyond the actual deficiency which has occurred during the voyage of importation by stress of weather or accident at sea.

As regards allowance for lost or missing packages, or separate arti-

cles, included in the manifest, but not found in vessel at unlading in U. S., governed by regulation in circular of 31st December, 1847, p. 1; but in cases where no such package has been lost or missing, no allowance or abatement of duties can be made for any alleged deficiency in any of [the] packages imported, such allowance or abatement being exclusively confined to actual deficiency, of any article which may be discovered in packages when opened, as prescribed in last proviso to 21st sec. of act of 30th Aug., 1842, it being observed as enjoined in circular of 18th December, 1847, that such allowance can then only be made in cases where [it] satisfactorily appears to appraisers that package had not been before opened after shipment for United States, and where package has not passed out of custody of officers of customs.

Whereupon, all and singular the premises being seen, heard, and by the court here fully understood, for that it appears to the court here that the said Frederick W. Brune, John C. Brune, and William H. Brune are entitled to recover in the plea aforesaid:

Judgment.

Therefore it is considered by the court here, that the said Frederick W. Brune, John C. Brune, and William H. Brune recover against the said William H. Marriott, as well the sum of ten thousand dollars, the damages in the declaration of the said Frederick W. Brune, John C. Brune, and William H. Brune, mentioned, as the sum of adjudged by the court here unto the said Frederick W. Brune, John C. Brune, and William H. Brune, on their assent, for their costs and charges by them about their suit in this behalf expended. And the said William H. Marriott, in mercy, &c.

Memorandum.

Judgment rendered in this cause on the 30th day of April, 1849, for the plaintiffs on the case stated for the damages laid in the declaration and costs. The said damages to be released on payment of $5,274 29, with interest thereon from the 19th day of May, 1849, till paid, and costs of suit.

Afterwards, to wit, on the fifth day of November, in the year of our Lord one thousand eight hundred and forty-nine, the said William H. Marriott, by his attorney aforesaid, produced to the said circuit court here the writ of the said United States of America, for the correcting of errors of and upon the premises aforesaid, *aforesaid*, commanding the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next, which said writ of error is in the words and of the tenor following, to wit:

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the judges of the circuit court of the United States, for the fourth circuit, in and for the Maryland district, greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea, which is in the said circuit court, before [SEAL.] you, or some of you, in which Frederick W. Brune, John C. Brune, and William H. Brune are plaintiffs, and William H. Marriot is defendant, a manifest error hath happened, to the great damage of the said William H. Marriot, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, on the first Monday in December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and forty-eight.

THO. SPICER,
Clerk Circuit Court.

Issued 5 November, 1849.

In pursuance whereof, and according to the form and effect of the act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court accordingly.

The United States of America, to Frederick W. Brune, John C. Brune, and William H. Brune, greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the fourth circuit, in and for the Maryland district, in a case wherein William H. Marriott is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said William H. Marriott in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness my hand and seal, at the city of Baltimore, in the district

aforesaid, this twenty-seventh day of November, in the year of our Lord one thousand eight hundred and forty-nine.

R. B. TANEY. [SEAL.]

Notice of the above citation is admitted.

BROWN & BRUNE, *for plaintiffs.*

Know all men by these presents, that we, William H. Marriott and J. McKim Marriott, of the city of Baltimore, are held and firmly bound unto Frederick W. Brune, John C. Brune, and William H. Brune, in the just and full sum of ten thousand dollars, lawful money of the United States, to be paid to the said Frederick W. Brune, John C. Brune, and William H. Brune, their heirs, executors, administrators or assigns; to which payment, well and truly to be made and done, we hereby bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this twenty-sixth day of November, in the year of our Lord one thousand eight hundred and forty-nine.

Whereas at a circuit court of the United States, for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in April, in the year of our Lord one thousand eight hundred and forty-nine, the said Frederick W. Brune, John C. Brune, and William H. Brune, by the judgment of the same court recovered against the said William H. Marriott the sum of five thousand two hundred and seventy-four dollars and twenty-nine cents, with interest from the nineteenth day of May, eighteen hundred and forty-nine, and costs.

And whereas the said William H. Marriott hath sued out the writ of the said United States of America, for the correcting of errors, commanding the record and proceedings of the judgment aforesaid, so as aforesaid rendered, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next. Now, the condition of the aforegoing obligation is such, that if the said William H. Marriott shall well and truly prosecute with effect his said writ of error, and pay unto the said Frederick W. Brune, John C. Brune, and William H. Brune, their heirs, executors, administrators or assigns, the amount of the said judgment, interest, costs and charges aforesaid, and also all such damages, costs, and charges as may be awarded by the said Supreme Court, in case he shall fail to make good his said plea, then the above obligation to be void, otherwise to be and remain in full force and virtue.

WM. H. MARRIOTT, [SEAL.]
J. McKIM MARRIOTT. [SEAL.]

Signed, sealed, and delivered in presence of—
WM. L. MARSHALL.

Approved. R. B. TANEY.

BRUNE vs. MARRIOTT. } In the circuit court of the U. S.

It is agreed in this case, that the printed circulars of the Secretary of

the Treasury, which were referred to in the argument of this case before the circuit court, shall not be inserted as a part of the record in this case on the writ of error, but that the counsel on either side may, on the trial of the case in the Supreme Court, read from such printed circulars as if they made part of the record.

It is admitted, and is to be considered as part of the statement of facts in this case, that the hogsheads, &c., in which the sugar and molasses in question in this case are therein stated to have been imported, were of the description in which such articles are usually imported from the different ports, from which said sugar and molasses were respectively imported.

BROWN & BRUNE, *for Plt'ffs.*
WM. L. MARSHALL, *for U. States.*

In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I hereunto subscribe my name, and affix the seal of the said circuit court, this twenty-seventh day of November, in the year of our Lord one thousand eight hundred and forty-nine.

[SEAL.]

THO. SPICER,
Cl'k Circ't C't.